



July 25, 2000

Ms. Janice Marie Wilson
Associate General Counsel
Texas Department of Transportation
P.O. Box 2293
Austin, Texas 78768

OR2000-2812

Dear Ms. Wilson:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 137349.

The Texas Department of Transportation (the "department") received a written request for information related to the sale or lease of billboard advertising space on state owned land or right of way in Harris County. You state that this request was received by the department on April 28, 2000. The department submitted the subject request for decision to this office on May 19, 2000.

Government Code section 552.301(b) requires a governmental body that seeks to withhold information responsive to a written request to submit a request for a decision regarding any exceptions to public disclosure that it asserts to the attorney general's office no later than the tenth business day following the governmental body's receipt of the written request for information. If the governmental body fails to do this, the requested information "is presumed to be subject to required public disclosure and must be released unless there is a compelling reason to withhold the information." Gov't Code § 552.302.

You contend that the 552.301(b) time period was tolled because "from May 1 to May 8, the parties were engaged in good-faith efforts to clarify the scope of the request." Section 552.222(b) of the Government Code provides that if a governmental body is unable to determine the nature of the records being sought, it may ask the requestor to clarify the request so that the desired records may be identified. Section 552.222 does not stand for the proposition that a request may be denied merely because it seeks a broad range of documents. When a requestor makes a vague or broad request, the governmental body should make a good faith effort to advise the requestor of the type of documents available so that the requestor may narrow or clarify the request. *See id.* at 5. On one hand, if the requestor chooses not to narrow a broad request, the governmental body must release all

responsive information if no exception to disclosure applies; administrative inconvenience of providing public records is not grounds for refusing to comply with the request. *Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668, 687 (Tex. 1976). On the other hand, if the request is so vaguely worded as to render it impossible to identify the responsive records, it is incumbent upon the governmental body to seek clarification from the requestor. See Open Records Decision Nos. 663 at 4 (1999), 23 at 1-2 (1974); see also Open Records Decision No. 304 (1982).

In this case, item 1 of the request, as worded, seeks delivery of tangible items, i.e. billboards. You correctly relate that tangible items are not subject to the disclosure requirements of the Public Information Act. See Gov't Code § 552.002; Open Records Decision No. 581 (1990). You relate that you contacted the requestor, who clarified this request to refer to all *files* of billboards that were located on land or right of way owned by the State of Texas. The requestor informs this office that he agreed to a narrowing of his request to exclude information related to land that the state does not own "but that is it."

You assert that the department immediately attempted to clarify the request by contacting the requestor on the first business day following its receipt of the request, May 1, 2000. The department then posted a letter to the requestor on May 5, 2000, which stated the department's understanding of the request as clarified. You indicate that on May 8, 2000, the requestor corrected the department's construction of his clarified request as conveyed in the May 5, 2000 letter. We find that between May 1, 2000 and May 8, 2000, the department was engaged in a good faith effort to clarify this request. The time used in clarifying or narrowing a request does not count as part of the governmental body's statutory allotment of ten business days to request an open records decision under section 552.301 of the Government Code. Open Records Decision No. 663 (1999). We conclude that the department's request for decision in this matter was therefore timely made.

The department indicates that it has released responsive information to the requestor, but that it seeks to withhold other information, which it has submitted to this office for review as exhibits C, D, E, F, G, and H. The department asserts that the submitted information is excepted from disclosure by Government Code sections 552.101, 552.105, 552.107 and 552.111.

The department also asserts that the release of some of the responsive information may implicate the proprietary interests of third parties. You further state that in accordance with section 552.305(d) you have notified the third parties of their opportunity to submit written comments to this office. Neither of the notified third parties has responded.

Section 552.105 excepts from required public disclosure information relating to (1) the location of real or personal property for a public purpose prior to public announcement of the project; or 2) appraisals or purchase price of real or personal property for a public purpose prior to the formal award of contracts for the property.

This exception protects a governmental body's planning and negotiating position with respect to particular transactions and its protection is therefore limited in duration. Open Records Decision No. 357 (1982). The exception extends to all information *related* to the location or cost of property to be acquired, including all proposed plans, locations and cost estimates, until the project is completed; all factual information relating to the project must be made available to the public on completion of the project. *See* Open Records Decision Nos. 564 (1990), 234 (1980).

To show the applicability of section 552.105, a governmental body must make a good faith determination that the release of information could damage its negotiating position with respect to the acquisition of property, subject to review by this office. Open Records Decision No. 564 (1990). You assert that you have made such a determination regarding the submitted information. You relate that the information submitted in exhibits C, D, E, F, and G relates to the acquisition of parcels of land along a railroad corridor and that the purchase of all of the needed parcels is not complete. This office has concluded that information about parcels of land acquired in advance of others to be acquired for the same project could be withheld where this information would harm the governmental body's negotiating position with respect to the remaining parcels. Open Records Decision No. 564 at 2 (1990). You also relate that the information submitted in exhibit H relates to the acquisition of a billboard and that the terms of that purchase are the subject of ongoing negotiation. We have reviewed the information at issue, and your arguments, and agree that you may withhold all of the submitted information from disclosure, at this time, under section 552.105.

As this request is resolved under section 552.105, the other arguments raised will not be addressed. This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

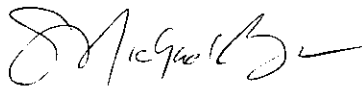
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be

provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Michael Jay Burns
Assistant Attorney General
Open Records Division

MJB/ljp

Ref: ID# 137349

Encl Submitted documents

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